

This appeal is directed against the order of learned Single Judge dated 13th July, 2000 by which the writ petition No.4182/92 filed by the appellant was dismissed by holding that there is delay of 15 years in filing the writ petition as the seniority list was prepared

in 1976.

The background of the writ petition which emerges from the facts narrated and about which there is no dispute is that the petitioner-appellant was initially appointed as temporary L.D.C. in the Municipal Council, Bhilwara on 15th June, 1972. He worked on that post continuously until March 4, 1976 when his temporary services were brought to an end. The said termination order was subject matter of S.B. Civil Writ Petition No.489/76. In the said proceedings termination order was found to be invalid.

During the pendency of the said writ petition, the petitioner came to be appointed substantively on the recommendations made by the Commission on being selected on the post of LDC by the Commission, in pursuance of which he joined the service. Notwithstanding the substantive fresh appointment having been given to the petitioner, he continued with the writ petition. The said writ petition came to be allowed on 3.7.1984. The termination of petitioner's

services by order dated 4th March, 1976 was quashed as it was found to be illegal. Since the petitioner was already in service, the question of reinstatement was not germane. However, the petitioner's name in the order dated 3.7.1984 Annex.1 to the writ petition appears along with Rameshwar Lal, Manohar Singh and Shantilal and who were held entitled to pay and allowance as admissible at the relevant date between the period of termination of their service and their appointment in pursuance of recommendation made by R.P.S.C. as if no order of termination was made on March 4, 1976 and they were held entitled to the benefits and allowances between the period when they were relieved of the charge and the fresh appointments were made in their favour.

The petitioners Suresh Chandra and Abdul Rashid, who were appointed afresh, were deemed to have been continued in service. All these cases were taken in appeal by the Municipal Council, Bhilwara.

The appeal was dismissed on merit when the

Division Bench found setting aside of the order of terminating the service of incumbents to be reasonable and proper.

The order of Division Bench was made on 31st July, 1989. In pursuance of said order, the petitioners made representation for consequential benefits about the emoluments and also for fixation of their proper place in seniority by considering them to be in continuous service from the date of their initial appointment. So far as the grant of relief of giving the benefit of selection scale with effect from the date of initial appointment as per the Government order which came into being on 25th January 1992 was extended to the petitioners. However, the petitioner's position in seniority as per last published list during the pendency of aforesaid list was not disturbed. No reply either was given to the petitioner's representation about assignment of proper seniority in consequence of their services which were held continuous.

The fact about said list is that on

19.3.1983 the provisional seniority list of Lower Divisional Clerks was published inviting objections within 15 days and after considering the objections, the final seniority list was published on 12/13th June, 1984 in which seniority of petitioner was determined by considering him to be substantively appointed on 31st Jan., 1977. It may be noticed that both, provisional seniority list as well as final seniority list, were published even before the decision of the learned Single Judge was rendered by which the termination order in respect of the petitioner was held to be invalid which was passed in 1976. Thus, as on the the date seniority list was published, the order terminating petitioner-appellant's service had not been set aside and the petitioner was in service as on that date only in consequence of subsequent appointment in pursuance to recommendation made by RPSC on being regularly selected.

Apparently, until the termination order was set aside and its consequential effect could be considered, the petitioner's appointment as on the date

of publication of the seniority list was only in pursuance of appointment given after selection made by the Commission. Therefore, the objections, if any, raised and decided by the respondents by 12th January, 1984 have no relevance for the purpose of considering effect on seniority as a result of setting aside of termination order by this Court with certain direction about consequential relief. Hence representation which arose out of the claim founded to claim consequential benefits of setting aside the termination order of March 1976 and April 1976 with direction of the Court that the termination order shall be deemed to have been never passed with giving all the benefits for the period between which the appellant remained out of service as a result of termination order could not be denied consideration on the ground that seniority list has been published after considering objection which were invited against provisional seniority list. The arrears of wages having been confined to 50%. In other respects, the Division Bench confirmed the order of learned Single Judge as noticed above. The Division Bench order came into existence in July 1989.

These facts, which have not been noticed by the learned Single Judge, clearly goes to show that the finding that the writ petition has been filed after 15 years of publication of seniority list suffers from gross latches was unfounded. Perhaps 15 years period was also taken into consideration by including the period during which the petition had remained pending hearing before this Court. The writ petition was decided in the year 2000 but the same has been filed in 1992 and the delay of 15 years has been taken into consideration with reference to the date when the matter was being heard and decided. Apparently, 8 years' period during which petition could not be heard by this Court, could not be part of latches, if any, attributed to the petitioner-appellant.

We are of the opinion that the determination of seniority in 1984 on the then existing facts was not and could not have been the subject matter of challenge in the previous writ petition, hence

could not be subject to principle of res judicata, proper or constructive. As a result of allowing of the writ petition with direction as noticed above, the seniority of petitioner-appellant was required to be considered in the light of consequences flowing from setting aside of termination order with direction to treat the service of petitioner to be continuous and without interruption. The other persons whose services have been terminated in 1976 like that of the petitioner and whose terminations were found to be invalid, we are informed, they were granted benefit as if the termination order has not been passed.

It was, therefore, the duty of the respondent Municipality to consider the consequential effect by giving the benefit of continuous service to the respective employees whose services otherwise terminated and who had been reemployed in their regular appointment. On account of non-consideration of this aspect of the matter, the judgment under appeal cannot be sustained. Considering that the judgment of Division Bench was rendered on 31st July, 1989 and that

the incumbents had made representations for securing the consequential benefits flowing from that judgment within a reasonable time thereafter the preliminary objection raised by the learned counsel for the respondents that the petition has rightly been dismissed on the ground of laches could not have been sustained. The dismissal of writ petition on the ground of laches was clearly erroneous and the order of learned Single Judge on that ground cannot be sustained.

On the merit of the case, the learned counsel for the respondent No.3, Mahesh Kumar, who is a person appointed through Commission in 1976 urges that under Rule 28 of the Rajasthan Municipalities (Subordinate and Ministerial Service) Rules, 1963 the seniority is to be computed from the date of order of substantive appointment. He submitted that the date of order of substantive appointment of Mahesh Chandra being 1976 and the date of order of substantive appointment of the petitioner being 1977, the petitioner has rightly been assigned the seniority w.e.f. 31st Jan., 1977 and he has rightly been placed above those

appointed in 1977.

On the other hand, the learned counsel for the petitioner relies on proviso to Rule 8 which had been inserted in 1982 extending the benefit of substantive appointment with effect from the date of temporary appointment, in case his services are recommended for confirmation by the Commission while the incumbent is continuing service in pursuance of temporary appointment. Learned counsel for the petitioner submits that since his services are to be considered continuous from the date of initial temporary appointment, his case is governed by the proviso to Rule 8. Since his appointment was recommended by the Commission, while he was continuing in service as a result of temporary appointment made much earlier, he fulfills the condition of proviso. As a result of setting aside of the termination order and considering his service to be continuous without interruption from the date of initial appointment.

The Rule 8 reads as under:–

“8. [Methods of recruitment].– Vacancies after the commencement of these rules shall be filled:–

- (i) By appointment in the lowest grade of each category.
- (ii) By promotion from the lower to a higher grade in the same category.
- (iii) By transfer of persons holding corresponding posts under a Board.
- (iv) By taking an official on deputation from the State Government.

The ratio of filling up the vacancies by direct recruitment and promotion shall be 50 : 50, unless otherwise provided.

[Note :– Any person, rendered surplus consequent on the fixation of the strength of the service, shall be absorbed first irrespective of this ratio of recruitment].

Provided that the case of such persons who were temporarily appointed during the period from 24.11.1963 to [31.12.1984]. (both inclusive) and who have not so far been confirmed on their respective posts, although working continuously shall be referred to the Commission by the Board concerned along with its recommendations for adjudging their suitability. The service record of the persons shall be sent to the Commission while referring case to it. The Commission, after considering the recommendations of the Board. The service record of the individuals, their qualifications, age etc., adjudge their suitability and shall communicate its decision to the Board concerned. The persons found suitable shall be treated as substantively appointed from the date of their temporary appointment.

Provided further that in case a person is not adjudged suitable by the Commission for the post to which he has been appointed, his

services shall be terminated forthwith and thereupon, such post shall be deemed to have become vacant and shall then be filled in accordance with these rules.]

The proviso referred to above was substituted by notification No.2(36)LSG/76/131523-131830, dated 29.9.1976. The last date of temporary appointment which were to be governed by the said proviso had been enhanced from time to time. Be that as it may, even in the first notification, the last date upto which the appointment made on temporary basis were to be considered for substantive appointment brought the petitioner's case within its ambit. Subsequent substantive appointment of petitioner in continuity of the temporary appointment would relate back the substantive appointment of the petitioner to the date of initial temporary appointment. In the present case, it is not in dispute that the appellant was appointed temporarily during the period governed by the proviso and, therefore, the date of order of substantive appointment of the appellant-petitioner has to be considered in terms of the special mandate provided

under the proviso, for the purpose of determining his seniority on that basis.

It may also be relevant to consider that in the first instance services of the petitioner had been terminated in 1976 and was regularly selected in 1977. The petitioner's services already stood terminated and, therefore, his appearance on the selection held by the Commission was obviously subject to the pending writ petition and if the termination order was to be set aside and his services were continued, his case was to be considered by the Commission under proviso to Rule 8. In fact, as noticed above, the petitioner-appellant's termination order was held to be invalid and he was allowed the continuity of service from the date of initial appointment, as if the termination order was not passed. The effect of the aforesaid order was that the case of the petitioner, who was temporarily appointed during the period from 24.11.1963 to 31.12.1984 having been appointed on 15.6.1972 and who had not been confirmed on his post and his case was required to be considered by the Commission when the proviso was

substituted in the first instance on 29.9.1976. At the cost of repetition, it is noticed that on 29.9.1976, the petitioner's service stood already terminated and, therefore, his case could not be sent to the Commission as per mandate of the proviso but later on he was found suitable for appointment by the Commission as per an independent candidate competing for selection, therefore suitability of the petitioner for the post held by him temporarily is unquestioned. It is also significant to notice that due to recommendations for appointment made in 1977, as a combined effect of order of High Court and Rule 8, as per the last proviso his services could not be terminated for fresh appointment to be given. As a result of the aforesaid judgment, if the petitioner is deemed to be continued in service from 16.6.1972 then the recommendation of the Commission that the petitioner is suitable for appointment as a Lower Divisional Clerk would obviously be referable to the proviso inasmuch as the petitioner could not be deprived of the benefit of proviso because of the wrongful action taken by the municipality in terminating his services as noticed earlier. The effect of this proviso is further that

those persons, who were working temporarily from the date of initial appointment until the case was required to be referred by the Municipal Council for consideration of his confirmation and on being adjudged suitable for the post, the persons suitable were to be treated as substantively appointed from the date of their initial appointment.

Taking any other view would be to nullify the effect of proviso by which the persons found suitable were to be deemed substantively appointed from the date of order of temporary appointment. Though the date of subsequent order is to be the date of order passed by the Commission, retrospective effect had been given to substantive appointment to be from the date of first appointment.

We are, therefore, not impressed by the contention raised by the learned counsel for the respondent Mahesh Kumar that because in Rule 28, the expression used by the Rule making Authority is that the seniority in each grade and category shall be determined

by the date of the order of substantive appointment to post in that grade or category and not from the date appointment is to be counted substantive, when substantive status takes effect retrospectively. The date of order related back to date with effect from which the appointment is to be treated substantive otherwise retrospective conferred by Rule does not have a meaning. No statutory rule can be interpreted so as to render other rule to be redundant and a fruitless exercise.

We are unable to sustain the aforesaid contention of the respondent that under Rule 28 only the date of order of substantive appointment is relevant and not the date w.e.f. which substantive appointment becomes effective. Accepting this contention would be denying the effect of treating date of initial appointment to be substantive appointment as deemed under proviso to Rule 8. Only legitimate construction of second proviso and third proviso to Rule 8 read together with rule 28 is that in cases where the substantive appointment is made in continuity of temporary

appointment on recommendation of Commission it is retrospective in effect inasmuch as the date of order of substantive appointment is to be considered w.e.f. which the date the initial temporary appointment from which date the substantive appointment is held to be commenced. Moreover in the proviso only reference for considering the person to be substantively appointed from the date of his temporary appointment and it does not envisage provision of any fresh temporary appointment.

Once we reach the aforesaid conclusion, the further conclusion is not for to reach that as a result of the judgment passed by this Court setting aside the termination order in the case of the petitioner he continued in service with effect from the date of his initial appointment in 1972 and on being found suitable by the Commission must lead to the result envisaged by the Rules read as a whole. In our opinion, the proviso to Rule 8 fully governs the case of the petitioner that once his services are considered continuous from the date of initial appointment his date of substantive

appointment relates back to date of initial temporary appointment in 1972.

The fact that in the peculiar circumstances of the case the municipality did not refer the case of the petitioner to the Commission under proviso to Rule 8 would not alter the situation of taking legal effect of the order passed by this Court.

Another contention which was raised by the learned counsel for the affected respondent was that the commission to which the cases were to be referred under proviso is other than the Rajasthan Public Service Commission which had considered the case of the petitioner.

The Commission has been defined under Rule 3 (3) of the Rules to mean Rajasthan Public Service Commission as it stood at the relevant time. The definition of Commission was amended vide notification dated 27th October, 1995 simultaneously with the insertion of Rule 8 A constituting the commission in the

manner stated in Rule 8 A for the purpose of proviso to Rule 8. Amendment in definition of the Commission in 1995 cannot affect the case of the petitioner which was to be considered by the Commission as defined and exerted and which was considered by the Commission as per definition of Commission existing at the time he was given substantive appointment.

Learned counsel for the Municipality stated that they had already extended the benefit of selection scale with effect from the date of initial appointment and, therefore, no grievance can be raised about it.

So far as the question of determining the petitioner's seniority with effect from the date of his initial appointment is concerned, the setting aside of the termination order and giving the consequential benefits as if the order was not passed, is not seriously disputed by the Municipality. We may notice that in two other writ petitions, this Court in the like matters have directed the re-determination of the seniority in accordance with the Rule for giving consequential effects of setting aside the

termination order made in 1976 and those writ petitions were allowed simultaneously. In three writ petitions No.2680/2001, 2677/2001 and 2773/2001, the Hon'ble Single Judge of this Court by giving the direction that in the facts and circumstances of the case, it is desirable that the respondent No.2 shall consider the case of the petitioners for seniority in accordance with the law giving effect to the judgment of this Court, after hearing the respondents No.3 to 7 and any other such person, who may be aggrieved. The respondent Municipal Council has not challenged the said order by way of any appeal. Therefore, the said order having been accepted by the Municipal Council, it must be taken that the Municipal Council has no objection in considering the case of the persons whose services have been terminated in 1976 but which orders were later on set aside by the clear direction that they will be deemed to be continuing in service with effect from the date of initial appointment as if the termination order was never passed.

In view of the above discussion, the appeal is allowed. The judgment under appeal is set aside. The

writ petition is allowed and the respondents are directed to consider the case of the appellant-petitioner for assigning him due seniority by considering his case as if he was continuing in service with effect from his initial date of appointment on temporary basis until Commission recommended his name for appointment. In these circumstances, the proviso to Rule 8 came into operation and the consequential benefits flowing therefrom in the matter of assigning seniority would reach the petitioners-appellant. If as a result of such consideration, petitioner's seniority position is improved as a consequence thereof his case for further promotions may also be considered as and when it become due as per such modified seniority. There will be no order as to costs.

[R.P. VYAS], J.

[RAJESH BALIA], J.

babulal/